

DDA 78-4622/1

21 December 1978

MEMORANDUM FOR: Frederick P. Hitz  
Legislative Counsel

OLC #78-3579/4

FROM :   
Assistant for Information/DDA

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SUBJECT : FY 1980 Intelligence Authorization Bill/  
Proposed Legislative Program for the First  
Session of the 96th Congress

REFERENCE : Your memo (OLC 78-3579), dated 14 December  
1978.

1. The following comments are made in response to referenced memorandum, which requested DDA comments on your draft FY 1980 Intelligence Authorization bill. Specifically, this memorandum addresses our comments related to Title VIII, Freedom of Information Act Amendment.

2. In reviewing your draft proposal, we considered how well it met the DDCI's assumption, whereby a full waiver would be obtained for relief from the Freedom of Information Act. Carrying the DDCI's assumption one step further, we find  positions have already been identified for elimination in our FY 1980 Congressional Budget submission to the Office of Management and Budget. Considering the above information, we find your draft proposal on Title VIII, Freedom of Information Act Amendment, will not provide full relief from FOIA and accordingly will not permit us to sustain the deletion of  positions already identified in the FY 1980 Congressional Budget. The only way we see that Mr. Carlucci's assumption can be implemented would be by complete relief from the FOIA, the Privacy Act, and Executive Order 12065 (which covers mandatory declassification). Not only would it be necessary to exempt all CIA records from the access provisions of the above, but also all CIA records held by other agencies as well as CIA-originated information contained on other agencies' records. Presuming that Mr. Carlucci's assumption is still a desirable goal, your proposed draft of Title VIII would have to be modified considerably. The Director of Central Intelligence already has the authority to exempt the Agency from the access provisions of the Privacy Act, although he has not seen fit to do so. We really do not feel, however, that the Congress will support complete relief from the FOIA, or the President from Executive Order 12065. As a feasible alternative, we suggest that your draft proposal of Title VIII amendments be changed as noted in paragraph 3 below.

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3. We believe your draft proposal is a good start, but recommend the following items be incorporated into your final edition in order to provide the best possible administrative relief and still give us a chance for approval.

a. Title VIII, Sec. 801, Subsection 552(c) of Title 5, United States Code - That the wording of the lead in paragraph to items (i), (ii), (iii), and (iv) be changed to read: "Nothing in this section shall be construed to require any agency or department having foreign intelligence or counterintelligence responsibilities to search for, review, or acknowledge the existence of information contained in its records pertaining to:

b. Subparagraph (iii) of Sec. 801, Subsection 552(c) of Title 5, U.S. Code - That the first five words "Foreign intelligence or counterintelligence operations" be changed to read: Covert action projects and foreign intelligence or counterintelligence operations.



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